

ENGLAND AND WALES

This report provides a summary of key developments in the regulatory landscape of the legal services market in England & Wales in 2019, as set out below:

1. Regulation - Anti-Money Laundering and Financial Crime
2. Legal Professional Privilege
3. Algorithms in the Justice Sector
4. Brexit and International Trade
5. Access to Justice
6. Diversity & Inclusion

Regulation - Anti-Money Laundering and Financial Crime

Economic Crime Plan 2019-2022

1. In July the Economic Crime Plan 2019-2022 was published. The plan sets the agenda for economic crime reform for the short-to-medium term. The plan's focus is broader than anti-money laundering and complements the government's revised Serious and Organised Crime Strategy announced on 1 November 2018
2. The Law Society of England & Wales ('Law Society'), as members of the Legal Sector Affinity Group and Economic Crime Strategic Board, will be involved in taking forward several action points. In particular:
 - Undertaking collective threat assessments;
 - Reviewing barriers to information sharing including between private sector actors;
 - Strengthening the consistency of professional body supervision;
 - Promoting digital identity verification services; and
 - Education and awareness raising on economic crime threats and the recovery of criminal assets.
3. A number of other initiatives under the plan will have significant impacts on the legal sector and may involve regulatory shifts. These include proposals for a sustainable resourcing model (potentially funded through a levy) and potential operational and statutory reforms of the Suspicious Activity Reporting (SARs) regime.

Transposition of the 5th EU Money Laundering Directive (5MLD)

4. In April 2019 the government published a consultation on proposals to transpose 5MLD into UK law. EU member states are required to transpose the reforms by 10 January 2020.
5. Because of uncertainty regarding the status of the UK's membership of the EU by the transposition date, the government is yet to formally respond to the consultation and release a final policy position. The proposed reforms include substantial changes for the legal sector including widening the scope of the trust registration requirements and

obliging regulated entities to identify and report discrepancies in beneficial ownership information.

6. The Law Society, alongside other legal sector stakeholders, is working to re-draft the sector-specific guidance on the Money Laundering Regulations to assist practitioners and to reflect the anticipated new regulatory requirements.

Legal Professional Privilege

7. Legal professional privilege (LPP) protects certain confidential communications from disclosure without the permission of a lawyer's client. LPP is a fundamental right of clients in English law and is a necessary corollary of the right of every person to seek legal advice. It plays a crucial role in ensuring the proper administration of the justice system.
8. The Law Society engages with government and public sector actors to seek to protect the boundaries and principles of privilege. We also make practical interventions in the courts to inform the development of the common law on LPP.
9. We raise public and member understanding of LPP through the media and our own publications, including our Practice Note on the subject. Where LPP concerns arise in relation to specific pieces of law, such as the new EU mandatory disclosure rules, we consult with members and seek to represent their views to government and identify practical solutions that protect people's rights.

Algorithms in the justice sector

Access to justice and LawTech

10. Technology is underused in increasing access to justice. There are significant barriers to technology adoption in the justice system and legal sector, however the benefits of technology outweigh the challenges.
11. A lot of great work is being done by firms, advice clinics and in-house teams to meet the legal needs of the public supported by technology. With more communication, funding and direction, it could well make a difference.
12. Despite the progressive adoption of technology, face-to-face advice is irreplaceable for certain types of clients or cases – technology can be an aid, but it is not a substitute.
13. The Technology and Law Public Policy Commission was created to explore the role of, and concerns about, the use of algorithms in the justice system. It held four public evidentiary sessions, interviewed over 75 experts, and read over 82 submissions of evidence and many more supplementary studies, reports and documents.
14. The Law Society's Commission on the use of Algorithms in the Justice System report, "Algorithm use in the criminal justice system", presents recommendations which we believe offer a practical and workable step in the right direction.
15. The report finds that the use of biased or oversimplified data can lead to discriminatory decisions, shallow understandings of complex issues and a lack of long-term analysis. Challenges include:
 - o Consequences for personal dignity, such as loss of individuality and autonomy and human rights such as privacy and freedom from discrimination.

- Reduced transparency in decision-making, leading to a lack of proper scrutiny and greater potential for abuse of power.
 - Risks to specific elements of the justice system, such as procedural flaws leading to unfair trials, and complex cases that could establish important legal precedents being managed out.
16. The Law Society’s report makes specific and actionable recommendations. We believe the following are the areas of greatest importance:
- Oversight –New mechanisms and institutional arrangements should be created to improve oversight of algorithms in the criminal justice system.
 - Strengthening Algorithmic Protections in Data Protection – The protections concerning algorithmic systems in Part 3 of the Data Protection Act 2018 should be clarified and strengthened.
 - Protection beyond Data Protection – Existing regulations concerning fairness and transparency of activities in the justice sector should be strengthened in relation to algorithmic systems.
 - Procurement – Algorithmic systems in the criminal justice system must allow for maximal control, amendment and public-facing transparency, and be tested and monitored for relevant human rights considerations.
 - Lawfulness – The lawful basis of all algorithmic systems in the criminal justice system must be clear and explicitly declared in advance.
 - Analytical Capacity and Capability – Significant investment must be carried out to support the ability of public bodies to understand the appropriateness of algorithmic systems and, where appropriate, how to deploy them responsibly.

Technology and the law

17. As a world leader in legal services, the UK can also become the global leader in LawTech. The Law Society is working to make this vision a reality by:
- Offering practical guidance for firms and lawyers on how to exploit the opportunities presented by LawTech;
 - Supporting the work of the LawTech Delivery Panel; and
 - Helping to promote a national LawTech ecosystem through the establishment of a LawTech Eagle Lab in partnership with Barclays.
18. The Law Society’s economic analysis of the LawTech sector has found that:
- Investment in the LawTech sector has been relatively small compared with investment in the fintech and insurtech sectors.
 - LawTech complements technologies used in the financial and business services sectors (20% of the demand for legal services comes from the financial sector).
 - Faster adoption of new LawTech will reduce the cost of legal services to UK business users by £350 million by 2030.

- The Law Society anticipates that the adoption of new technologies could increase productivity growth in the legal sector from 1.3% per year to 2.7% per year.
 - The legal services sector is a crucial source of wealth generation for the UK economy, but more importantly it is also a facilitator of wealth generation in other sectors. Every £1 spent on legal services supports £1.39 in spending across the entire UK economy, and this contribution could be increased by investment in LawTech.
 - The development of LawTech will lead to lower prices for consumers of legal services and will make them more accessible to businesses and citizens.
 - Public funding for research, infrastructure, education and co-ordination will enable the UK to maintain its position as a global legal centre and to secure its position as a leading hub for development of LawTech.
19. The UK's regulatory structure helps to drive innovation. Building on this advantageous position, public investment in LawTech will deliver a strong positive economic return.
20. A world leading LawTech sector will play a vital role in supporting the success of the Government's industrial strategy, driving productivity across the economy, advancing the use of AI and data and creating an efficient justice system. A technologically empowered legal services sector will also enable the UK to be more competitive internationally.
21. We have called on the Government to:
- Increase public funding for research, infrastructure, and engagement between stakeholders involved in the design, development and deployment of LawTech.
 - Continue its strong support for the LawTech Delivery Panel's work to identify and address barriers to the development and widespread adoption of LawTech in the UK.
 - Continue to support the Law Commission's work to ensure the law is sufficiently certain and flexible to apply in a global, digital context and highlight any topics which lack clarity or certainty where test cases may need to be conducted.
- Continue to recognise LawTech as an important part of the economy and its potential for driving productivity. LawTech should be considered in future digital and technology policy initiatives. As part of the UK's wider strategy to encourage fintech companies to establish businesses in the UK, LawTech should also be promoted due to the close relationship between the UK's financial services and legal sectors.

Brexit and International Trade

Position on no deal

22. In the interests of legal certainty, it is imperative that a 'no-deal' scenario is avoided. The UK would become a third country in relation to the EU. It would no longer be

negotiating for legal services market access with the EU, but with 31 different regulatory regimes, with different levels of restrictions placed on third-country lawyers.

23. It is vital that an orderly transition to whatever follows EU membership is achieved. The likely breadth of changes means that citizens and businesses – and indeed EU member states themselves – will need time to familiarise themselves with and adapt to the changes.
24. We were pleased to see the steps the Government has taken around the Hague Conventions and would like to see them seek to accede to the Lugano Convention when possible. The Government have confirmed that this is their intention. However, these measures can only mitigate the challenges engendered by a ‘no-deal’ exit.

Trade in legal services

25. Access to markets for legal services is usually made up of provisions taken at WTO (World Trade Organisation) level and/or in a given trade agreement and domestic regulation. In the case of lawyers, it is very often in the hands of a national bar association or law society.
26. A trade agreement is often a blunt instrument in terms of achieving liberalisation in services, as dealing with domestic regulations is not as simple as seeking to lower tariffs on goods.
27. If we are to unlock the potential of legal services as an export, we need to:
 - Ensure that any ongoing and forthcoming FTA (Free Trade Agreement) negotiations include an ambitious legal services chapter, increasing transparency of restrictions, locking in existing restrictions and setting out clear commitments to liberalisation;
 - Ensure posts (Embassies and High Commissions) support the legal services sector in lobbying on key asks for unilateral legal services sector liberalisation in priority jurisdictions;
 - Ensure the asks of the legal services sector are included in regular economic and trade dialogues between the Government and priority jurisdictions.
28. We are calling on the Government to prioritise legal services in future trade deals.

Future relationship position – Association Agreement

29. Regarding the future relationship with the EU, we encourage the Government to be ambitious for legal services. We would like to see a strengthened political declaration on services and civil judicial co-operation, and recommend the Government seek an association agreement with the EU as this is the best option to ensure our legal sector continues to thrive.
30. We recently published a paper, “The UK-EU future partnership – legal services sector”, setting out how different relationships would affect the legal sector and outlining why an association agreement is the best option available.

31. Importantly, such a deep relationship would not trigger Most Favoured Nation (MFN) provisions in other FTAs. This is because the MFN does not apply in those agreements concluded by the EU with EEA or Switzerland, which aim to replicate the Lawyers' Directives, include approximating legislation and adopting measures for recognition.
32. It would also be possible to include other key justice matters in an association agreement framework, providing for continued judicial cooperation on civil, commercial, family law or criminal justice matters.
33. The Law Society has argued for the need to maintain these provisions in its other communications and the UK government has agreed on the importance of including these forms of judicial cooperation in the future agreement. With this in mind, it is worth noting that no previous third country-EU FTA has contained civil and commercial law matters, or criminal justice, while they fit within the association agreement model.

Open jurisdiction

34. Whatever happens in the Brexit process, England and Wales will remain an open and welcoming jurisdiction for foreign lawyers looking to practise and establish here. Apart from a small number of legal activities which are reserved to legal service providers regulated in the UK, you do not need to be a qualified solicitor to provide legal services and/or draft contracts under English and Welsh law.
35. London is home to legal professionals from 100 jurisdictions and 200 foreign law firms, and they are an integral and valued part of our legal sector.
36. The freedom for lawyers qualified in foreign jurisdictions to provide legal services and establish law practices will not change after the UK exits the EU, whether or not it leaves under a withdrawal agreement.
37. The UK Government has taken the unilateral decision to grant registered European lawyers the benefits of the EU Lawyers Establishment Directive until 31 December 2020 in the event of no deal, so current rights privileging EU lawyers above third-country practitioners will continue to apply until that date.

Access to Justice

Court modernisation

38. HM Courts & Tribunals Service (HMCTS) is halfway through a reform programme to modernise the courts and tribunals system by creating services that are digital by default and design. In March 2019 they announced a one-year extension to the programme and anticipate completion in December 2023. The extension takes into account our concerns about the risk that the fast pace of this ambitious reform programme would not allow sufficient time for testing, evaluation and evidence that technology works.
39. The Law Society is positioning itself as a “critical friend” of the project. We welcome modernisation of the courts provided the proposals are not driven by austerity measures (access to justice must remain at the heart of the programme) and technology is not implemented unless it has been tested, evaluated and proven to work.

40. We are engaging regularly at all levels to put forward the views of our members. We have been consulted on prototypes of the online processes and have been contributing to research HMCTS are undertaking on the “as is” position in many different areas of law and procedure.
41. In January 2019 the Justice Select Committee launched an inquiry into the access to justice implications of the HMCTS reforms, including the increasing use of digital and video technology and the closure of courts and tribunals hearing centres. We submitted written and oral evidence. A summary of our position is:
- The Law Society is broadly supportive of the modernisation programme and understands the need to manage the pressures on courts and tribunals by taking advantage of the opportunities that technology can provide to delivering a just, proportionate and accessible system that provides value for money.
 - The proposed reforms, however, will have an impact on access to justice across the justice system and particularly on the digitally excluded. The Law Society believes that some of the reforms will have a positive impact on access to justice where digitisation will make processes simpler and faster
 - There will be times when only face-to-face physical hearings will deliver justice, and this option needs to be realistically available and accessible when required.
 - The Law Society is concerned that some projects in the programme give insufficient weight and prominence to the need for legal advice or representation which will impact on the rule of law as a key principle that everyone should be treated fairly and equally.
42. The Justice Select Committee is due to publish their final report in October.

How TLS addresses judicial diversity - Solicitor Judges Division (SJD)

43. The SJD provides networking and development opportunities and brings together both aspiring and experienced solicitor judges to share advice. It aims to increase the number of solicitor judges, by encouraging solicitors of diverse experience and backgrounds to apply for judicial posts. We believe that increasing the number of solicitors appointed as judges would contribute to both greater diversity of the judicial cohort and cognitive diversity of judges (given the valuable set of skills, professional experience and expertise solicitors attain).
44. We provide a wealth of online material for members interested in the judiciary as well as targeted training sessions and seminars. We also host networking events for members of the SJD (including sitting solicitor judges and aspiring solicitor judges). In addition, we host expert seminars for key stakeholders to discuss the appointment process and judicial diversity, focusing on the appointment and progression of solicitor judges.

SJD judicial pathway

45. A key feature of the support available through the SJD is the Judicial Pathway, the Law Society's toolkit for solicitors at any career stage seeking to obtain a deep and practical understanding of becoming a judge in England and Wales. Constructed by solicitor and judge Alexandra Marks CBE, it guides members' personal and professional development and demonstrates the competencies needed for securing a judicial role.

Pre-Application Judicial Education (PAJE)

46. The PAJE initiative is led by the JAC and the Ministry of Justice, with the support of the Law Society, Bar Council and CILEx. The PAJE scheme is primarily aimed at those that are eligible for judicial appointments from the following four underrepresented groups – BAME lawyers, women lawyers, lawyers with disabilities and/or solicitors and chartered legal executives (both with a litigation and non-litigation background) and those from a non-litigation background including academic and non-practising barristers. Participation at PAJE will enable lawyers to explore the realities of being a judge as well as any perceptions they may have on barriers to a judicial career.
47. The judge-led discussion groups offered to successful applicants who are selected to attend the PAJE workshops are administered by the professional bodies and commenced in autumn 2019.

Diversity and Inclusion (D&I)

TLS Diversity and Inclusion charter

48. The Diversity and Inclusion Charter was created in 2009 as a pledge-based initiative which our members' firms could sign up to and be awarded for reaching certain criteria.
49. In 2018 the Law Society's D&I team started a comprehensive review of the Charter, including consulting our members, and reconstructing it to better serve the profession.
50. The charter's five categories (gender; LGBT+; race and ethnicity; disability and wellbeing; and social mobility) will be subsumed into one encompassing application offered over three levels (Bronze, Silver, Gold):
 - Bronze - understanding your organisation and creating a baseline
 - Silver - creating and sustaining impact
 - Gold - being an exemplar organisation
51. Our aim is to challenge the legal sectors' D&I practices, encourage growth and excellence and provide a framework for firms to build upon. Mainly focused on data collection and analysis, we hope this information will provide us with a narrative of the profession which we will be able to use to tailor the future of D&I team's work and what we will provide to our members.

52. We launched the pilot stage of the review process with 12 firms across the country and of varying sizes, focusing on the gender module in April 2019. We have been supporting participants with monthly calls offering guidance and receiving feedback. The submission date for applications to bronze under pilot conditions is 31 January 2020 and applications will be peer assessed by a panel of people drawn from the profession. Panel members will be trained beforehand and staff from the D&I Team will act as moderators throughout the process. No awards will be given under pilot conditions.

Women in Leadership in Law

53. In the centenary year of the Sex Removal (Disqualification) Act, we will continue to work on gender equality in the law to create a more equal profession.

54. One hundred years on from the passing of the act, women are still not reaching senior positions in equal numbers to men - 50.2% of practising solicitors are women yet women only make up 30.1% of partners in private practice.

55. Key figures from our survey on women in the law:

- In the largest ever survey on women in the law (February 2018), unconscious bias in the legal profession was the most commonly identified barrier to career progression for women (cited by 52% of respondents), while flexible working was seen as a remedy by an overwhelming 91% of respondents to our survey.
- 74% of men and 48% of women reported progress on gender equality in the last 5 years
- Main barriers to career progression perceived as: Unconscious bias (52%), Unacceptable work/life balance demanded to reach senior levels (49%), Traditional networks/routes to promotion are male orientated (46%), Current resistance to flexible working practices (41%)
- 91% of respondents said flexible working is critical to improving diversity but 52% work in an organisation where flexible working is in place
- 60% are aware of gender pay gap in their place of work but only 16% see visible steps taken to address gender pay gap

TLS Women in Law Pledge

56. At our international symposium on women in the law in June 2019, the Law Society launched our women in law pledge with CILEx and the Bar Council and with support from the then justice secretary David Gauke to encourage greater diversity in the profession.

57. Law firms, local law societies, barristers' chambers and organisations outside the legal sector both in the UK and internationally were invited to sign up to the Pledge.

58. Organisations who sign the pledge will commit to support the progression of women into senior roles in the profession by focusing on retention and promotion opportunities, set clear plans and targets around gender equality and diversity for their

organisation, publish their action plan and publicly report on their progress towards achieving their goals.

International Women in Leadership in Law

59. 34 IWIL roundtables were undertaken in 18 jurisdictions, 21 cities, 5 continents, with over 712 women lawyers participating:
60. The qualitative data and testimonies gathered from these 34 IWIL roundtables were included in the Law Society “Advocating for Change: Transforming the Future of the Legal Profession through greater Gender Equality”, which was launched on 19 June 2019 in London at the Law Society. Despite a few contextual differences, the report demonstrates that the challenges and experiences of female lawyers are very similar across the globe. Some key issues include:
 - traditional gender roles and stereotypes
 - gender pay gap
 - flexible working
61. The Law Society contributed to and organised the launch of the World Bank 2018 report on “Women, Business and the Law report in July 2018.
62. Capitalising on its UN-ECOSOC status, the Law Society organised the 1st delegation to the 63rd UN Commission on the Status of Women that took place in March 2019 at the UN Building in New York. Three Law Society side events were organised with over 100 people participating and with Law Society President Christina Blacklaws presenting at each event. Two “International Women and the Law” roundtables were held organised by Lexis Nexis (hosted by Debevoise & Plimpton) and IANGEL (hosted by Kellye Drye & Warren), and with the participation of a total of 36 female lawyers. Two external speaking slots (IANGEL and the IBA), and 20 external side events attended including the CSW63 Townhall Meeting of Civil Society with UN Secretary General Antonio Guterres and moderated by UN Women Executive Director Phumzile Mlambo-Ngcuka

The Law Society of England and Wales